

Reply and Amendment After Final (37 CFR 1.116)
Applicant: Robert W. Coulombe
Serial No.: 10 / 649,219
Gp. Art Unit: 3643 (Robert P. Swiatek)
Filing Date: August 26, 2003

Atty. Ref.: EFQ 108 A 1

REMARKS

By this Reply, independent Claims 6 and 26 and dependent Claims 33 and 37 are amended; Claims 46 – 49 are cancelled; and no claims are newly added. Accordingly, upon entry of this Reply, Claims 1 - 45 are pending in this Application.

Certain paragraphs of the Specification that describe the drawing Figures are amended. Present Paragraph 43 includes descriptions of both FIG. 15A and FIG. 16 and FIG. 16 is now described in separate Paragraph 43.1. Further, Paragraphs 41, 43, 44, and 45 used terms such as looking down, bottom, or bottom side in referring to the horseshoe. The paragraphs are amended to clarify that the respective view is of a ground engaging or hoof engaging side of the horseshoe.

The Claims are amended in a manner to simplify issues and advance prosecution and place the Application in condition for allowance. In particular:

- (a) Claims 46 – 49 are cancelled.
- (b) Claims 33 and 37 are amended in a minor fashion to clarify terms for which antecedent basis is provided. No new matter is introduced.
- (c) Claims 6 and 26 are amended in a manner to incorporate language suggested by the Examiner to more clearly define the invention herein over the prior art, such as Zeller. No new matter is introduced.
- (d) Claims 1-5, 8-25, and 38-45 are allowed in the Office Action.

After a final rejection, as is the situation herein, entry of a response is discretionary on the part of the Examiner and, in general, is limited to changes that

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simplify issues and/or place the application in better condition for appeal or allowance. The cancellation of claims herein simplifies issues. The amendments to Claims 6, 26, 33, and 37 present no new issues. Claims 6 and 26 incorporate language suggested by the Examiner to define over the references herein. Claims 33 and 37 clarify terms. The non-allowed Claims 6, 7, 26, 27, 30, 34, 35 are submitted as being patentable (and allowable) for the same reasons that Claims 1-5, 8-25, and 38-45 are now allowed.

In short, Applicant's Attorney submits that entry of this Reply is appropriate because only allowable subject matter remains and the Application is now in condition for allowance.

Entry of this Reply and reconsideration of this Application is requested.

The above-identified Office Action ("Action") has been reviewed, the Examiner's comments carefully weighed, and the references carefully considered. In view thereof the present Reply is submitted.

Applicant's Attorney submits that the claim amendments requested herein and the arguments in support of the claims traverse the Examiner's bases of rejection set forth in the Action and the rejections are obviated or otherwise overcome.

THE OFFICE ACTION

Preliminarily, in the "Office Action Summary" (PTOL-326), the Examiner rejected Claims 6, 7, 26, 27, 30, 34, 35, and 46-49.

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By this Reply and Amendment, all grounds of objection and/or rejection raised by the Examiner have been responded to. Applicant's Attorney traverses the Examiner's rejections and requests reconsideration of this Application.

The respective issues raised by the Examiner will now be addressed herein.

Claim Objections:

The Examiner (Action, Page 4) objected to Claims 28, 29, 31-33, 36 and 37 as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim.

Each of these claims depend from independent Claim 26. As noted herein below, Claim 26 and independent Claim 6 are amended in a manner to patentably define over the prior art relied upon by the Examiner.

By the amendment herein to Claim 26, the Examiner's objection is believed obviated. As such, for the same reason that Claim 26 is patentable, so are Claims 27 – 37 dependent thereon.

Claims 26 -37 are described herein below in further detail and each is believed to be patentable and in condition for allowance.

Claim Rejections: 35 USC Section 103(b)

Claims 6 and 7 are rejected (Action, Page 2) under 35 USC 103(a) as being unpatentable over Schrader et al. in view of Zeller (989,469).

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The Examiner contends that the horseshoe of Schrader et al. includes a shock absorbing pad 11 that covers virtually the entire bottom surface of a horse hoof, and an embedded metal plate 4 that does not include a traction element. The plate also includes a plurality of integral clips 5 that extend outwardly therefrom to engage the sidewall of the horse's hoof. Zeller includes a reinforcing plate 10 embedded in a body portion 4, and anti-slip members 12 project downwardly from the plate to engage the ground. The Examiner contends that it would have been obvious to one skilled in the art to provide the embedded metal plate 4 of Schrader et al. with a downwardly extending traction element in view of the teaching of Zeller that such an element serves an anti-slipping function.

As applied, the Examiner notes that Claim 6 does not require that the shock absorbing pad be in contact with the horse's hoof when in use, merely that it covers the hoof bottom surface – a limitation the Schrader et al. patent meets. Further, the Examiner contends that the Schrader et al. pad is “*adapted*” to be sandwiched between a horse's hoof and a metal horseshoe.

Applicant's Attorney traverses the Examiner's rejections of Claims 6 and 7 under 35 USC 103(a) as being based on an improper hindsight reconstruction of Schrader et al. in view of Zeller. In fact, the Schrader et al. and Zeller references each teach away from the claimed invention.

Applicant's Attorney disagrees that the pad in Schrader is “*adapted*” or “*could*” be sandwiched between a horse's hoof and a metal horseshoe. There is no

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teaching, suggestion, or motivation in Schrader et al. for attaching a horseshoe to the bottom of the pad, or how such "reconstruction" of Schrader et al. would be accomplished, without the benefit of Applicant's claims as a roadmap.

To advance prosecution and more clearly define the invention over the prior art, Claim 6 is amended herein and in a manner suggested by the Examiner. Claim 6 now requires, inter alia, a shock absorbing pad that is

"sandwiched between the bottom surface of a horse's hoof and the mating face of a horseshoe when the horseshoe is attached to the bottom surface of said hoof, said pad comprising a body portion formed of an elastomeric material and having an outer peripheral shape that is coextensive with the outer periphery of the horse's hoof and an upper surface that covers the entire bottom surface of said hoof, and a generally planar stiffening plate embedded interiorly of said body portion, the upper surface of said shock absorbing pad, when in use, being in direct contact with the bottom surface of said hoof, and said stiffening plate including a raised traction element extending away from the bottom surface and a toe clip extending from the outer periphery of the pad and towards the bottom surface whereby to engage the outer periphery of the hoof."

As such, as amended, when in use, the outer periphery of the shock absorbing pad is coextensive with the outer periphery of the horse's hoof, and the upper surface of the pad covers the entire bottom surface of the hoof and is in direct contact therewith.

Claim 6 is submitted as patentably defining over the Schrader et al. and Zeller references relied upon by the Examiner.

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Schrader et al. discloses a horseshoe assembly assembled to the bottom surface of a horse's hoof, wherein a sheet 13 of leather or fabric is sandwiched between a horse's hoof and an elastomeric pad 11, with the top surface of the fabric sheet 13 in direct contact with the bottom surface of the horseshoe and the lower surface of the fabric sheet 13 in direct contact with the top surface of the elastomeric pad 11. A metal plate 4 is embedded in the elastomer and has tangs for securement to the outer periphery of the hoof.

Schrader et al. teaches that the bottom surface of a horse's hoof should be protected by a sheet of leather or fabric being placed in direct contact with the bottom surface of the hoof.

Schrader et al. teaches away from the invention required by Claim 6:

(1) Claim 6 requires a shock absorbing pad of elastomeric material, the upper surface of which, when in use, is in direct contact with the bottom surface of said hoof and covers the entire bottom surface of the hoof; Schrader et al. teaches provision of an elastomeric pad but teaches against the use as required. Instead, Schrader et al. teaches that in use, when the horseshoe assembly is attached to a horse's hoof, a sheet of leather or fabric (not elastomer) be in direct contact with the bottom surface of the horse's hoof, that the leather sheet serve to space the shock absorbing pad of elastomer away from direct contact with the hoof – not permit direct contact of the elastomer with the hoof, and that the shock absorbing pad covers not all but “virtually the entire bottom surface” of the horse's hoof.

(2) Claim 6 further requires that the elastomeric pad, when in use, have an outer peripheral shape that is coextensive with the outer periphery of the horse's hoof. Schrader et al. teaches that the shock absorbing pad 11 be spaced from the hoof and "covers" virtually the entire bottom surface. By being spaced away and not the same area, Schrader et al. teaches away from an elastomeric pad having an outer periphery that, when in use, is coextensive with the outer periphery of the hoof.

(3) Claim 6 requires a generally planar stiffening plate embedded interiorly of said [shock absorbing pad and] ... including a raised traction element extending away from the bottom surface ... ". Schrader et al does not show or suggest the provision of a traction element(s).

Zeller discloses an auxiliary horseshoe wherein flexible straps 6 removably hold a resilient rubber pad 4 against the ground-engaging bottom surface of a horseshoe 2, which in turn is fixedly secured to the bottom surface of the horse's hoof. The removable auxiliary horseshoe pad 4 does not engage the bottom surface of the horse's hoof but engages the bottom surface of the horseshoe 2.

Claim 6 is directed to a "shock absorbing pad that is adapted to be sandwiched between the bottom surface of a horse's hoof and the mating face of a horseshoe when the horseshoe is attached to the bottom surface of said hoof". While Zeller shows the provision of a traction element within an elastomeric body, when in

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use, Zeller does not “sandwich” an elastomeric pad between the bottom surface of a horse’s hoof and a horseshoe.

Schrader et al and Zeller do not show and do not suggest that a shock absorbing pad be sandwiched between the bottom surface of a horse’s hoof and the mating face of a horseshoe. These references teach that an elastomeric pad be spaced from the bottom surface of a horse’s hoof.

Contrary to that required by Claim 6, the Schrader et al. and Zeller references teach away from placing a shock absorbing pad into sandwiched arrangement between the horse’s hoof and a horseshoe.

In Schrader et al, a fabric sheet 13 is sandwiched between the bottom surface of the horse’s hoof and the top surface of a body 11 of elastomeric material. The sheet 13 is not of elastomeric material and does not include traction elements. To the extent that body 9 (of rubber and with plate 4) is assembled to the horse’s hoof, Schrader et al teaches that the rubber body 9 not be sandwiched between the hoof and a horseshoe. Indeed, the rubber body 9 (with plate 4) is essentially the horseshoe.

Reconstruction of Schrader et al. with the teaching of Zeller is of no help.

In Zeller, the pad 4 of elastomeric material is an auxiliary horseshoe adapted to be removably attached to and extend from the bottom surface of a primary horseshoe fixedly attached to the bottom surface of the horse’s hoof. The primary horseshoe 2 is fixedly secured to the bottom surface of the horse’s hoof 1. The

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auxiliary horseshoe 4 is a second horseshoe, which is seated within downwardly extending calks 3 of the primary horseshoe 2 and secured by straps 6 onto the primary horseshoe.

Contrary to Claim 6, in Zeller, the pad 4 is spaced from bottom surface of the horse's hoof, and held against the bottom surface of the horseshoe by the straps 6. The auxiliary horseshoe (i.e., the pad) 4 is not secured to nor intended to be secured to the bottom surface of the horse's hoof.

Accordingly, although Schrader et al and Zeller have elements of interest, these references do not show, or make obvious, the invention required by Claim 6. Any such reconstruction of the references, in the manner relied upon by the Examiner, is an impermissible hindsight reconstruction, using Applicant's claim as a road map

Applicant's Attorney submits that Claim 6 patentably defines over the prior art of record and is in condition for allowance.

Claim 7 depends on Claim 6 and is submitted as being patentable for the same reason that Claim 6 is patentable.

Claim 7 further requires that the "...pad is wedge shaped for effecting a change in balance of the hoof and/or gait of the horse."

The Schrader et al and Zeller references do not show and do not suggest an elastomeric pad that is wedge shaped, as required by Claim 7. These references do

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not show and do not suggest an elastomeric pad that is wedge shaped for effecting a change in balance of the hoof and/or gait of the horse, as required by Claim 7.

Zeller is directed to a temporary, or auxiliary horseshoe, that is used in conjunction with a primary horseshoe. There is no suggestion that the auxiliary horseshoe be anything other than a temporary add-on, certainly not for the purposes of addressing long term problems associated with gait and balance.

Schrader et al. suggests the use of a sheet of resilient material to cushion what might otherwise be a hardened elastomer, wherein to obviate inadequate cushioning against the bottom surface of the horse's hoof.

The references relied upon by the Examiner do not render obvious under 35 USC 103(a) the invention as required by Claim 7.

Accordingly, Applicant's Attorney submits that Claim 7 is patentable over the prior art and is in condition for allowance.

Claim Rejections: 35 USC Section 102(b):

Claims 26, 30 and 35 are rejected under 35 USC 102(b) as being anticipated by Schrader et al (1,212,266). The Examiner contends that metal plate 4 of Schrader et al. is considered to constitute a "planar flexure plate" which includes shaped openings 6 and is embedded in rubber material 11. The Examiner continues: "The material 11 is considered abutable – that is – *capable of abutting* – with the bottom surface of the horse's hoof if the fabric or leather sheet were removed or otherwise absent. Before the sheet was mated to material 11, for

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example, the upper surface of material 11 could be placed or held against a horse's hoof." [Italics in original, underlining provided herein]

Applicant's Attorney traverses the Examiner's Section 102(b) rejections for the reasons given herein below.

Claim 26 is directed to a horseshoe for covering and protecting the bottom surface of a horse's hoof from shock and concussive forces when the horseshoe is attached thereto and requires a planar flexure plate. Claim 26 is amended herein and in a manner similar to Claim 6. In particular, amended Claim 26 requires, inter alia:

" a planar flexure plate embedded into a body of a first elastomeric material, said flexure plate having a curvilinear outer periphery and an arcuate forward end portion, said elastomeric material forming an upper surface that is in direct contacting engagement against the bottom surface of the hoof when the pad is in use, a lower surface that engages the ground, and an outer periphery, the outer periphery defined by the elastomeric material covering the flexure plate being coextensive with the outer periphery of the horse's hoof,"

Similar to Claim 6, amended Claim 26 requires, inter alia, a flexure plate embedded into a first elastomeric material, the elastomeric material having an upper surface that is in direct contacting engagement against the bottom surface of the hoof, a lower surface that engages the ground, and an outer periphery defined by the elastomeric material covering the flexure plate being coextensive with the outer periphery of the horse's hoof.

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In order to anticipate, each claim requirement must be found in a single reference. As will be pointed out, the Schrader et al. reference is deficient, and as such, the anticipation rejections of Claims 26, 30, and 35 under 35 USC Section 102 should be withdrawn.

The Examiner contends that:

“The material 11 [of Schrader et al.] is considered abutable – that is – *capable of abutting* – with the bottom surface of the horse’s hoof if the fabric or leather sheet were removed or otherwise absent. Before the sheet was mated to material 11, for example, the upper surface of material 11 could be placed or held against a horse’s hoof.”

This is not logical. Indeed, following the Examiner’s logic, if the elastic material 11 of Schrader et al. were removed or otherwise absent, there would be no basis for the rejection. The fact is, the relationship required by Claim 26 is not found in the Schrader et al. reference and to “read it out” or ignore it is not anticipation.

However, to advance prosecution, the term “abutable” is deleted. Claim 26 now recites that when the pad is in use the upper surface of the elastomer is in direct contact with the bottom surface of the hoof.

As discussed herein above, Schrader et al. shows a sheet 13 of fabric or leather is direct contacting engagement with the bottom surface of the horse’s hoof. The leather sheet 13 is sandwiched between the bottom surface of the horse’s hoof and a pad 11 of rubber. Because of the sheet 13, the rubber pad 11 (with metal plate 4) is spaced from and prevented from having any direct contacting

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engagement with the bottom surface of the horse's hoof. Restated, the rubber pad 11 (with plate 4) does not have an upper surface that is in direct contacting engagement with the bottom surface of the horse's hoof, as required by Claim 26.

Accordingly, the Examiner's rejection of Claim 26 under 35 USC 102(b), based on Schrader et al, should be withdrawn.

Applicant's Attorney submits that Claim 26 is patentable over the prior art and in condition for allowance.

Claims 30 and 35 variously depend from Claim 26 and are submitted as being patentable for the same reason that Claim 26 is allowable.

Claim 30 further requires that "... said flexure plate [is] adapted to overlies the frog portion of the horse's hoof and ... [forms] a pair of shaped openings ... [which] are removably filled with elastomeric material, removal of the elastomer exposing the bottom surface of the hoof to permit the horse's hoof to be accessed to tend to a wound thereto ...".

In Schrader et al., the fabric sheet 13 is in "virtually" complete covering relation against the bottom surface of the horse's hoof and has no openings. The sheet 13 prevents any access to the frog portion of the horse's hoof to tend to a wound. The plate 4 has apertures 6, which are permanently filled with rubber. The apertures 6 are not "shaped openings", and the rubber is not intended to be removed from these openings to expose the bottom surface of the hoof to permit the user to tend to a wound in the frog area of the horse's hoof. Even if the rubber were to be

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removed from the apertures 6, the sheet 13 would prevent access to the frog portion of the horse's hoof.

The Examiner's reliance on Schrader et al. is believed in error and the rejection of Claim 30 under 35 USC 102(b) should be withdrawn.

Claim 35 further defines a group of materials, including rubber, which are suitable for practicing the invention. Schrader et al. discloses that the plate 4 is embedded in rubber, which is only one of the materials recited in the required group. However, Schrader et al. does not disclose the group of materials required by Claim 35.

The Examiner's reliance on Schrader et al. is believed in error and the rejection of Claim 35 under 35 USC 102(b) should be withdrawn.

Applicant's Attorney submits that Claims 30 and 35 are patentable over the prior art and in condition for allowance.

Claim Rejection: 35 USC Section 103(b)

Claim 27 is rejected under 35 USC 103(a) as being unpatentable over Schrader et al in view of Smith (1,516,508). The Examiner contends that the Schrader et al. horseshoe lacks a toe calk, but would have been obvious to employ such a calk in view of the teaching of Smith that an embedded toe calk provides a horseshoe with enhanced traction and minimizes slippage (page 1, lines 68-70 of Smith).

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Applicant's Attorney traverses the Examiner's rejection of Claim 27 under 35 USC 103(a) as being an improper hindsight reconstruction of the Schrader et al. and Smith references.

Claim 27 depends from Claim 26 and is submitted as being patentable for the same reason that Claim 26 is patentable.

Additionally, Claim 27 further requires "a toe calk ... at the forward end portion of said flexure plate and projecting upwardly from said lower surface [of the elastomeric material that engages the ground]"

The Schrader et al horseshoe discloses a flexure plate 4 embedded in a rubber body 9. The flexure plate includes toe clips 5 to engage the horse's hoof but does not show and does not suggest a toe calk.

Smith discloses a horseshoe 10 having a clip 11, fastened directly to the horse's hoof, and a hardened hollow box-like calk member 13, attached to the bottom of the horseshoe 10. The calk has a front portion 14, side portion 15 and interconnecting wall portion 16, and rubber or pads 22 are molded into the box. In Smith, the lower surface of the rubber 22 and the calk 13 are coplanar. The calk 13 does not project upwardly from the lower surface of the elastomer 22,

Applicant's Attorney submits that there is no motivation to reconstruct the horseshoe of Schrader et al. to include a toe calk, in view of the teaching of Smith.

Even if the references are reconstructed in a manner suggested by the Examiner wherein to provide the Schrader et al. horseshoe with the box-like toe

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calk 13 and elastomer 22 of Smith, the reconstruction fails to meet the requirements of Claim 27.

That is, Claim 27 requires, inter alia, that the toe calk upwardly from the lower surface of the elastomer. Smith teaches that the calk and elastomer be coplanar. As such, Smith teaches away from the requirements of Claim 27.

Claim 27 depends from Claim 26 and requires, inter alia, that the flexure plate/elastomeric material are in contacting engagement with the bottom surface of the horse's hoof. The Schrader et al. and Smith references both teach that the elastomer and calk be spaced from the bottom surface of the horse's hoof. As such, these references teach away from the requirements of Claim 27.

Applicant's Attorney submits that Claim 27 is not obvious under 35 USC 103(a) in view of the prior art references to Schrader et al. and Smith. As such, Claim 27 is submitted as being patentable and in condition for allowance.

Claim 34 is rejected under 35 USC 103(a) as being unpatentable over Schrader et al. The Examiner contends that although the use of an aluminum or polyurethane flexure plate with Schrader et al, while not disclosed, nonetheless would have been obvious to one skilled in the art wishing to reduce manufacturing costs.

Claim 34 is dependent on Claim 26 and is submitted as patentably defining over the prior art for the same reason that Claim 26 is patentable.

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Further, Applicant's Attorney traverses the Examiner's rejection as hindsight, as in the form of an unsupported "taking notice" of things.

The Examiner's conclusion relies upon a proposition that one skilled in the art is solely looking for ways to reduce manufacturing costs. While costs are important, the complete horseshoe assembly which is affixed to the hoof of a horse come as a result of a number of factors. A primary consideration is the health and well being of the foot. The best materials are as a result oftentimes only found in their combination.

As admitted by the Examiner, Schrader et al. does not show or suggest the use of a flexure plate of aluminum or polyurethane. As material science progresses, new materials provide different opportunities. Flexure of the plate, such as in combination with the central traction section, and the material and geometry of the elastomer, may provide unexpected circulatory benefits to the frog portion of the horse's hoof. As such, the fact is that one skilled in the art of making things cheaper may not be the person in the art providing a better horseshoe assembly for the horse's hoof.

Applicant's Attorney submits that the Examiner's rejection is unsupported by prior art and that unless credible art is provided such rejection should be withdrawn.

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Applicant's Attorney submits that Claim 34 is not obvious under 35 USC 103(a) in view of the prior art reference to Schrader et al. As such, Claim 34 is submitted as being patentable and in condition for allowance.

The Examiner objected to Claims 28, 29, 31-33, 36, and 37 as being dependent on a rejected base claim (viz., Claim 26). Claims 28 depends from Claim 27 and is submitted as being allowable for the same reason Claim 27 is now allowable. Claim 29 depends from Claim 28 and is allowable for the same reason Claim 28 is now allowable. Claims 30, 34, and 35 depend from Claim 26 and are allowable for the same reason that Claim 26 is now allowable. Claim 31 depends from Claim 29 and is allowable for the same reason Claim 28 is now allowable. Claims 32 and 36 depend from Claim 31 and are allowable for the same reason that Claim 31 is now allowable. Claim 33 depends from Claim 32 and is allowable for the same reason that Claim 32 is now allowable. Claim 37 depends from Claim 33 and is allowable for the same reason that Claim 33 is now allowable.

Art Cited But Not Applied by the Examiner:

Applicant's Attorney notes the patent to Sigafos (US 5,699,861) as an example of a horseshoe.

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CONCLUSION AND SUMMARY

The Specification is amended in a manner to improve readability. No new matter was added.

Claims 1 – 49 were examined. Following entry of this Reply, Claims 46 – 49 are cancelled, and Claims 1-45 remain in the Application.

Claims 1-5, 8-25, and 38-45 are allowed.

Claims 6, 7, 26, 27, 30, 34, 35, and 46-49 were rejected, for reasons given.

Independent Claims 6 and 26 and dependent Claims 33 and 37 are amended. Independent Claims 6 and 26 are amended in a manner suggested by the Examiner to more clearly define over the prior art (especially Schrader et al.) As amended, Claims 6 and 26 are submitted as being patentable over the prior art.

Applicant's Attorney submits that by the amendments to certain of the claims and/or in view of the comments herein above regarding the Examiner's rejections under 35 USC Sections 102(b) and 103(a) based on prior art patents applied against the claims, that Claims 1 – 45 are definite, patentably define over the prior art, and are in condition for allowance.

Applicant's Attorney submits that Claims 1 – 45, all claims pending in this application, are patentable over the prior art of record and in condition for allowance.

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Applicant's Attorney respectfully solicits the issuance of a Notice of Allowance of this Application, including Claims 1 - 45.

If the Examiner believes that a telephone conference would expedite this case, such call is encouraged.

Respectfully submitted,



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